SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 359

PORTER-WADLEY LUMBER COMPANY, ET AL.,
Petitioners,

vs.

JAMES T. PRUITT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The opinion of the Court of Appeals, Fifth Circuit, is reported in the Federal Reporter, entitled Porter-Wadley Lumber Company et al., *v.* James T. Pruitt, 110 Federal Reporter (2nd series) 976 (R. 169).

II.

Jurisdiction.

(1) The date of the decree to be reviewed is April 1st, 1940 (R. 170), the application for rehearing was denied June 13, 1940 (R. 175).

(2) a. It is contended that the opinion and decree violates Section 1 of Article 4 of the Constitution of the United

States in denying full faith and credit to the dissolution proceedings of the Porter-Wadley Lumber Company, made in accordance with the laws of Arkansas, the state creating the corporation;

b. Said opinion and decree annul valid contractual rights of petitioners in violation of Section 10, Article 1, of the Constitution of the United States;

c. That the opinion and decree are erroneous in failing to hold that the plea of ten years prescription filed by respondent did not apply to the rights of petitioners, but if applicable, same was interrupted by a written contract signed by respondent with petitioners, and by acceptance of rentals and royalties from petitioners, and by the minority of Margaret Porter, one of the petitioners, in accordance with the juris prudence of Louisiana.

d. The opinion and decree are inconsistent in holding that the mineral rights were vested in the Porter-Wadley Lumber Company in a suit by respondent against petitioners, the sole stockholders of said corporation, without making the corporation a party to the proceeding.

(3) The statute believed to sustain the jurisdiction in this case is Section 24 of the Judicial Code, as amended by Act of February 13, 1925, 43 Stat. 938; January 31, 1928, 45 Stat. 54; June 7th, 1934, 48 Stat. 926.

(4) Cases believed to sustain appellant jurisdiction of the Supreme Court are: *Forsyth* v. *Hammond,* 166 U. S. 506, 41 L. Ed. 1095; *Title Guaranty & Surety Company* v. *U. S.,* 32 Sup. Ct. 168, 222 U. S. 401, 56 L. Ed. 248; *National Surety Company* v. *Cobb,* 66 F. (2d) 323; *Pease* v. *Peck,* 18 Howard 595, 15 L. Ed. 518; *Relf* v. *Rundle,* 103 U. S. 22, 26 L. Ed. 337; *Trustees of Dartmouth College* v. *Woodward,* 4 Wheat. 514, 4 L. Ed. 629.

III.

Statement of the Case.

Respondent alleges he is the owner and in possession of the E½ of the SE¼ and the SE¼ of the NE¼, Section 7, T. 21 N., R. 9 W., Webster Parish, Louisiana. That petitioners are slandering the title of the respondent to the minerals underlying said property by virtue of a mineral reservation of February 12, 1918, in a deed by the Porter-Wadley Lumber Company to O. M. Cavin. He alleges he acquired said mineral rights by virtue of ten years prescription as the petitioners have not developed said mineral rights within ten years preceding the institution of said suit.

Petitioners denied respondent ever exercised any corporeal possession of mineral rights, that these rights were reserved in a deed from the Porter-Wadley Lumber Company of O. M. Cavin, February 12, 1916, which reads as follows:

> "The vendor, the Porter-Wadley Lumber Company, reserves, holds, keeps and owns for a term of 35 years, all oil, gas, sulphur and mineral rights of any and every description that may exist or be found in and under the lands herein conveyed with the right of ingress and egress for the purpose of searching, developing, exploiting and producing said oil, gas, sulphur or minerals and the right to take water and fuel from the lands for the purpose of such exploitation, with the right to build pipe lines and tanks for the purpose of saving and removing the products that may be found.
>
> "The Porter-Wadley Lumber Company shall pay to the vendee hereunder, his heirs, successors or assigns, one-half of all the net revenue that may be obtained from the sale of the oil, gas, sulphur and minerals herein reserved.
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> "The intention of this clause being that said oil, gas, sulphur and minerals are not included in this sale and

for a term of 35 years, the Porter-Wadley Lumber Company shall have the right to develop said products and to sell and remove same subject to the condition that one-half of the net amount in money arising from such sale shall be paid over to the grantee herein, his heirs, successors or assigns."

O. M. Cavin was acting as a representative of the North American Investment and Development Company and sold said property December 27, 1917, to W. T. Gleason, making the same reservation. Eight days later, to-wit, January 5, 1918, W. T. Gleason sold this same property to J. T. Pruitt, respondent, making the same mineral reservation.

The Porter-Wadley Lumber Company, an Arkansas corporation, was dissolved May 3, 1917, and surrendered its charter in accordance with the laws of Arkansas.

At the time of dissolution the assets of the corporation became vested in the stockholders as follows:

J. K. Wadley	36/75
Lillian J. Porter	18/75
Margaret Porter, minor	18/75
W. R. Grim	2/75
J. M. Wilson	1/75

W. R. Grim died leaving Mrs. W. R. Grim, Mrs. Emaline Grim Fuller and Mrs. Loretta Grim Thomas as his heirs at law, petitioners herein.

At the time of dissolution one of the stockholders, Margaret Porter was a minor, which suspended the running of prescription not only as to her interest but as to the interest of the major co-owners as well.

An oil and gas lease was made by petitioners May 27, 1918, to Pine Valley Oil Company and an oil and gas well drilled and completed with the knowledge and consent of respondent.

That the mineral reservation constituted in law and in fact a right in the nature of a leasehold estate for 35 years on February 12, 1916.

Judgment was rendered by U. S. Court in favor of respondent and motion for a new trial filed (R. 151-153), urging assignments of error.

IV.

Statement of Facts.

The Porter-Wadley Lumber Company was a corporation organized under the laws of the State of Arkansas and authorized to do business in the State of Louisiana. Prior to February 12, 1916, it acquired large tracts of land in Webster Parish, Louisiana; that E. E. Porter, President of the corporation and owner of practically one-half of the capital stock with J. K. Wadley, died November 5, 1913, in the State of Arkansas, leaving his wife, Lillian J. Porter, and a minor child, Margaret Porter, born April 28, 1910, as his sole heirs at law. J. K. Wadley was appointed executor of the will, and likewise, was appointed guardian of the minor, Margaret Porter, in Arkansas; later, he was appointed Tutor, and W. T. Gleason was appointed under Tutor in the District Court of Webster Parish, Louisiana.

On February 12, 1916, the Porter-Wadley Lumber Company sold a large part of its lands in Webster Parish, Louisiana, including the property in controversy, to O. M. Cavin, who subsequently transferred the property to the North American Investment & Development Company, December 27, 1917, and the North American Investment & Development Company, on the same day, sold the property, including that in controversy, to W. Y. Gleason, and on January 5, 1918, W. T. Gleason sold the property in controversy to J. T. Pruitt, appellee in this case. In all of

these instruments, the mineral contract or reservation was made or referred to, which we have above quoted.

On May 28, 1918, appellants executed an oil and gas lease to Pine Valley Oil Company covering the property in controversy and other lands (R. 94) on which a well was drilled and completed to a depth of twenty-seven hundred (2,700) feet, which well, however, was abandoned January 2, 1920. On November 4, 1936, J. K. Wadley, Lillian J. Porter, and Margaret Porter filed a declaration of ownership in the Conveyance Records of Webster Parish, Louisiana, showing the ownership, the dissolution of the corporation, the development of the property, and the minority of Margaret Porter (R. 100). On November 29, 1933, an oil and gas lease was executed by the appellants and by Margaret Porter to the Arkansas Fuel Oil Corporation for a period of three years, and on June 2, 1930, another oil and gas lease was executed by the appellants, including Margaret Porter, to the Pure Oil Company for a period of three years (R. 33). June 9, 1930, a joint lease was made by the defendants, including Margaret Porter and North American Investment and Development Company, the owner of the land on that date, and Gulf Refining Company, for a period of three years (R. 41).

On May 6, 1929, an oil and gas lease was made by the appellants on part of said property to William Kemp (R. 51). January 5, 1928, a lease was made by the appellants to C. H. Lyons *et al.* (R. 55).

James D. Shaver, an attorney at law of Texarkana, Arkansas, testified (R. 70) that the title vested in J. K. Wadley and Charles W. Porter, trustees under the will of E. E. Porter, deceased, is the same title vested in an executor or administrator, and if the estate owed no debts the trustees acquired no title and that the beneficiary title was vested in Margaret Porter, a minor child.

He further testified in substance (R. 72) that when the Porter-Wadley Lumber Company was dissolved in 1917 without debts the stockholders became the owners of the corporate assets.

It is shown by the testimony of J. K. Wadley and Lillian J. Porter that Margaret Porter was a minor and that the Porter-Wadley Lumber Company was dissolved without debts (R. 112).

James D. Head, a prominent attorney of Arkansas, stated that under the laws of that State upon the dissolution of the corporation the corporate assets became vested in the stockholders in proportion to the stock held (R. 113).

Fred E. Koch stated the purpose of the reservation (R. 120) as follows:

> "The intention of the parties in making said reservation was that the Porter-Wadley Lumber Company was located in the vicinity of the above described lands and its officers were familiar with the oil and gas business, and it was to vest authority in said company to execute oil and gas leases or to develop said property, on the condition that one-half of the revenues, less expenses was to be divided, one-half to the Porter-Wadley Lumber Company and one-half to the German-American Investment Company and its successors. The purpose was to place the management and the control of the mineral sales and development in the Porter-Wadley Lumber Company and its officers, without the necessity of having the German-American Investment Company execute the leases for the reason that J. K. Wadley, who was one of the larger stockholders of the Porter-Wadley Lumber Company and in charge of its affairs was actively engaged in the oil and gas business, and could make contracts that were more advantageous to all parties concerned than the officers of the German-American Investment Company, located in the State of Iowa.

> "As agent and representative of the German-American Investment Company, I felt that my company was fully protected because of the financial ability of the Porter-Wadley Lumber Company and its officers, and for the further reason that said arrangements were made solely on the condition that one-half of the revenues derived from development, leases, or sales of said minerals should be paid over to the German-American Investment Company and I knew that unless said payments were made, the German-American Investment Company would have a right to dissolve and set aside said reservation."

A well was drilled and payments of rental were made under various mineral leases to respondent and his authors in title.

IV.

Specification of Errors.

(1) The Court of Appeals erred in holding that the Porter-Wadley Lumber Company, an Arkansas corporation, which was dissolved in accordance with the laws of the State of Arkansas, continued as a corporation in Louisiana by virtue of the provisions of Act 267 of 1914 of the Acts of Louisiana,[1] contrary to the provisions of Section 1, Article 4, of the Constitution of the United States, and contrary to the established jurisprudence of Louisiana and prior decisions of the Court of Appeals.

(2) That the Court of Appeals erred in holding that the respondent was the owner of the mineral rights thereby divesting petitioners of their rights under said reservation and impairing the contractual rights vested in petitioners in violation of Article 1, Section 10, of the Constitution of the United States.

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[1] See appendix for copy of Act.

(3) That the opinion of the Court of Appeal held that the Porter-Wadley Lumber Company, though dissolved in accordance with the laws of Arkansas, the state of its creation, was an existing corporation in Louisiana and was the owner of said mineral rights, which opinion was inconsistent with its decree which cancelled said mineral rights in a suit against petitioners, sole stockholders of the corporation, when the corporation was not cited or made a party to the suit.

V.

ARGUMENT.

First Assignment.

The decision of the Court of Appeals is contrary to the jurisprudence of the State of Louisiana, and violates Section 1, Article 4, of the U. S. Constitution.

> Art. 4, Sec. 1, U. S. Constitution; Chicago R. R. Co. *v.* Wiggens Ferry Co., 119 U. S. 622, 30 L. Ed. 519; Mormon Church *v.* U. S., 136 U. S. 1, 47, 34 L. Ed. 478; Pewabic Mining Co. *v.* Mason, 145 U. S. 349, 36 L. Ed. 732; Stern Coal & Lbr. Co. *v.* Van Winkle, 221 Fed. 590, 596; Sistare *v.* Sistare, 218 U. S. 1, 54 L. Ed. 905; Converse *v.* Hamilton, 224 U. S. 243, 56 L. Ed. 749.

Second Assignment.

The opinion and decree of the Court of Appeals violates Section 10, Article 1 of the U. S. Constitution.

> La. Civil Code, Art. 1764, 2013; Pioneer Gas Co. *v.* Robinson, 173 La. 938; Sporl *v.* N. Y. Indemnity Co., 176 La. 363; Queensborough *v.* Cazeau, 136 La. 732; Gulf Refining Co. *v.* Glassell, 186 La. 201; State *v.* Board of Administrators, 125 La. 432; Gelpske *v.* Dubuque, 1 Wall 206, 17 L. Ed. 520; Union Bank *v.* Oxford, 90 Fed. 7, 10; Mulhker *v.* New York R. Co., 197 U. S. 570, 49 L. Ed. 872.

Third Assignment.

The property of the dissolved Porter-Wadley Lumber Company reverted to and passed to its stockholders at the moment of dissolution and that the current of prescription did not run because Margaret Porter, one of the stockholders, was a minor and respondent by accepting the rentals and bonus under the various leases estopped the title of petitioners.

(a) Minority suspended prescription.

Sample *v.* Whitaker, 172 La. 722; Walling Heirs *v.* Warfield, 33 Ann. 1177; Bird, executor, *v.* Generes, 30 Ann. 675.

(b) Respondent by accepting rentals and bonus has interrupted prescription.

La. Civil Code, Arts. 3520, 3460-3461; Nabors Oil and Gas Co. *v.* La. Oil Ref. Co., 151 La. 397; Mulhern *v.* Hayne, 171 La. 1003; Frost Lbr. Industries *v.* Union Power Co. Inc., 182 La. 439; Succession of Ferguson, 17 Ann. 255.

(c) Estoppel by acceptance of benefits under contracts.

La. Civil Code, Arts. 802, 3520, 3554; Sample *v.* Whitaker, 172 La. 722; Webb. *v.* Deeson, 11 Ann. 84; Muller *v.* Hoth, 110 La. 105; Rocques *v.* Levecque, 110 La. 306; Keating *v.* Wilbert, 110 La. 461; Bush *v.* Marshall, 6 Howard, 284, 12 L. Ed. 440; Harris *v.* United Public Service Co., 181 La. 990; Leiber *v.* Ouachita Oil and Gas Co., 163 La. 160; Conger *v.* City of New Orleans, 32 Ann. 1254.

(d) A proper interpretation of the mineral reservation shows it to be in the nature of a mineral lease or leasehold estate and is not subject to prescription or limitation under Louisiana law. *New Orleans* v. *Shakespeare,* 39 Ann. 133, *State* v. *Board of Administrators,* 125 La. 432, *Palmer* v.

Bender, 49 Fed. (2nd) 316, *Logan* v. *State Gravel Co.*, 158 La. 105, *Gulf Refining Co.* v. *Glassell*, 186 La. 190, *Smith* v. *Sun Oil Company*, 165 La. 911, *Johnson* v. *Moody*, 168 La. 799, *Robinson* v. *Pioneer Gas Co.*, 1 73 La. 230.

We have argued certain principals of law at length in the briefs filed in the case of Porter-Wadley Lumber Company, et al., petitioners, *v.* C. Orbin Bailey, respondent, presented contemporaneously herewith and respectfully refer the Court to the brief in that case for a more elaborate discussion of the issues involved herein.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that this case might be reviewed, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals and finally reverse it.

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